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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 Jamie Elward,
11 Plaintiff,
12 vs.
13 Sealy, Inc., a foreign corporation,
14 Defendant.

Case No. 3:22-cv-05645-BHS

**STIPULATED PROTECTIVE
ORDER**

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16 1. **PURPOSES AND LIMITATIONS**

17 Discovery in this action is likely to involve production of confidential, proprietary, or
18 private information for which special protection may be warranted. Accordingly, the parties
19 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
20 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
21 protection on all disclosures or responses to discovery, the protection it affords from public
22 disclosure and use extends only to the limited information or items that are entitled to
23 confidential treatment under the applicable legal principles, and it does not presumptively entitle
24 parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged: (a) personal information of any employee or other person,
4 including compensation information, discipline, policy violations, personal identifying
5 information, information contained in or derived from background reports, personnel files, and
6 contact information; (b) information furnished to the disclosing party in confidence by any third
7 party, which information is not known or freely accessible to the general public; (c) documents
8 containing or disclosing confidential or proprietary information regarding Defendant's
9 competitive strategic initiatives, business plans, contracts with third-party providers, nonpublic
10 litigation information, and/or analyses; (d) internal communications related to confidential,
11 proprietary, and/or trade secret information; and (e) medical records of Plaintiff and/or other
12 employees of Defendant, and any confidential communications concerning those medical
13 records or the medical conditions that are discussed in those records.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential material (as
16 defined above), but also (1) any information copied or extracted from confidential material; (2)
17 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
18 conversations, or presentations by parties or their counsel that might reveal confidential material.

19 However, the protections conferred by this agreement do not cover information that is in
20 the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
23 or produced by another party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
25 the categories of persons and under the conditions described in this agreement. Confidential
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1 material must be stored and maintained by a receiving party at a location and in a secure manner
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
10 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for
13 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
14 A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication
17 of confidential material, provided that counsel for the party retaining the copy or imaging service
18 instructs the service not to disclose any confidential material to third parties and to immediately
19 return all originals and copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
24 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this agreement;

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(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated
4 for protection do not qualify for protection, the designating party must promptly notify all other
5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
9 be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic documents
11 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
13 contains confidential material. If only a portion or portions of the material on a page qualifies
14 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
15 making appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings: the parties
17 and any participating non-parties must identify on the record, during the deposition or other
18 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
19 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
20 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
21 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
22 confidential information at trial, the issue should be addressed during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix in a prominent place
24 on the exterior of the container or containers in which the information or item is stored the word
25 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
26 the producing party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the designating party's
 3 right to secure protection under this agreement for such material. Upon timely correction of a
 4 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 5 in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 14 regarding confidential designations without court involvement. Any motion regarding
 15 confidential designations or for a protective order must include a certification, in the motion or
 16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 17 conference with other affected parties in an effort to resolve the dispute without court action.
 18 The certification must list the date, manner, and participants to the conference. A good faith
 19 effort to confer requires a face-to-face meeting, a telephone conference, Zoom conference, or
 20 comparable virtual means.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 22 intervention, the designating party may file and serve a motion to retain confidentiality under
 23 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 24 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 25 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
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1 other parties) may expose the challenging party to sanctions. All parties shall continue to
2 maintain the material in question as confidential until the court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
4 **LITIGATION**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
21 of this agreement, and (d) request that such person or persons execute the "Acknowledgment
22 and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
24 **MATERIAL**

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties agree
4 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Upon request of the producing party, within 60 days after the termination of this action,
7 including all appeals, each receiving party must return all confidential material to the producing
8 party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree
9 upon appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
15 designating party agrees otherwise in writing or a court orders otherwise.

16 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

17 Respectfully submitted this 3rd day of February, 2023.

18 HUGH J. MCGAVICK, P.S.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED,

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding, whether inadvertent or otherwise, shall not, for the purposes
4 of this proceeding or any other federal or state proceeding, constitute a waiver by the producing
5 party of any privilege applicable to those documents, including the attorney-client privilege,
6 attorney work-product protection, or any other privilege or protection recognized by law.

7 Dated this 3rd day of February, 2023

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11 BENJAMIN H. SETTLE
12 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Jamie Edward v. Sealy, Inc.*, Case No. 3:22-cv-05645-BHS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

17 || Date: _____

18 | City and State where sworn and signed: _____

19 Printed name: _____

20 || Signature: